

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2626 of 1989

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

PATEL MULABHAI DHURABHAI

Versus

PUJARA KHATUJI HEMATAJI

Appearance:

MR AJ PATEL for Petitioner
MR GR SHAIKH for Respondent No. 1
GOVERNMENT PLEADER for Respondent No. 2

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI

Date of decision: 23/06/2000

C.A.V. JUDGEMENT

#. By this Special Civil Application under Article 227 of the Constitution, the petitioner, who is a purchaser of the agricultural land in dispute, from its erstwhile landlord, assails the order dated 18-10-1988 passed by

the Gujarat Revenue Tribunal, whereby the order of the Collector, Himmatnagar dated 4-5-1981 granting permission to sell the land to the present petitioner on the application of the erstwhile landlord under subsection (8) of Section 32P of the Bombay Tenancy and Agricultural Lands Act, 1948 has been set aside and the matter has been remanded to the Collector for grant of opportunity of hearing to respondent No.1, who claims to be the erstwhile tenant of the land and seeks to enforce priority for purchase of the land.

#. I have heard the learned counsel appearing for the petitioner who is purchaser of the land after grant of permission by the Collector and the learned counsel appearing for respondent No.1 representing the erstwhile tenant who was summarily evicted from the land followed by restoration of possession of land to the erstwhile landlord. The learned counsel for the parties addressed me in great details on the merits of the case.

#. On behalf of the petitioner who has purchased the land consequent upon the grant of permission of the Collector, it is submitted that the land having been restored to the erstwhile landlord, and the tenancy terminated as the tenant failed to purchase the land on the same being offered to him in terms of provisions of Section 32-P(2)(b), as they stood prior to the deletion of sub-clause (b) of said section, the erstwhile tenant can claim no further right of purchase of land on priority basis. The landlord, due to old age and his inability to personally cultivate the land, had sought permission for sale under subsection (8) of Section 32P of the Act.

#. On behalf of the erstwhile tenant (respondent No.1) for claiming such right of purchase in priority at the second stage from the landlord, who had obtained the land on resumption and termination of tenancy, on behalf of the erstwhile tenant, strong reliance is placed on Single Bench decision of this Court rendered by Mr. Justice S.B. Majmudar, as he then was in Jivraj Jutha Vs. State of Gujarat and Ors. 15(2) 1984(2) GLR 1195.

#. After hearing the counsel for the parties on the above mentioned point and the point of jurisdiction of the Tribunal raised on behalf of the petitioner, I do not consider it necessary to decide the question of tenability of the claim of the erstwhile tenant to purchase the land on priority basis when his tenancy was terminated earlier and he had shown his inability to purchase the land, whereupon it was restored to the

erstwhile landlord. In my considered opinion, this petition deserves to be allowed on the preliminary objection based on jurisdiction raised on behalf of the petitioner with regard to the powers of the Tribunal to interfere in the matter as Revisional Authority.

#. Learned counsel appearing for the petitioner invited my attention to the relevant provisions contained in subsections (7), (8), (9), (10) and (11) of Section 32P which are as under:-

"32P(7) Where, before the specified date, any land has been surrendered to a landlord under sub-section (2) of this section as in force immediately before such date; and the landlord has taken possession of the land, the landlord shall be liable to cultivate the land personally and shall be entitled to the use and occupation of the land so long as he cultivates the land personally.

(b) If he fails to so cultivate the land he shall be evicted from the land and the land shall be disposed of in accordance with the provisions of section 84C.

(8) No land of the description referred to in sub-section (7) shall be transferred by sale, gift, exchange, mortgage, lease or assignment or partitioned without the previous sanction of the Collector and except on payment of such amount as the State Government may by general or special order determine.

(9) Any person aggrieved by any order made by the Collector under the foregoing provisions of this section may appeal to the State Government against such order.

(10) The State Government shall after giving an opportunity to the parties to be heard, decide the appeal.

(11) The order of the Collector, subject to such appeal and decision of the State Government on appeal, shall be final"

#. Learned counsel appearing for the petitioner appears to be right in his submission that erstwhile tenant was a 'person aggrieved' by the order of grant of permission by the Collector to the erstwhile landlord for disposing of the land by sale in favour of the present petitioner and in accordance with subsection (9) of Section 32P (quoted above), the remedy of erstwhile tenant was to approach the appellate authority, i.e. State Government. In the revision preferred, therefore, in the year 1976 after a

lapse of about 5 years from the grant of permission and purchase of the land by the present petitioner by registered sale deed dated 1-8-1981, the Revenue Tribunal erroneously exercised its jurisdiction under Section 76 of the Act. Section 76 of the Act provides remedy of revision to the Tribunal against all orders excepting orders passed under Section 32P by the Collector against which under the aforesaid Section there is a remedy of appeal provided to the State Government. Section 76 of the Act in its relevant part reads:-

"76.Revision. - (1) Notwithstanding anything contained in the Bombay Revenue Tribunal Act, 1957 an application for revision may be made to the Gujarat Revenue Tribunal constituted under the said Act against any order of the Collector except an order under section 32P or an order in appeal against an order under subsection (4) of section 32G on the following grounds only -

- (a) that the order of the Collector was contrary to law;
- (b) that the Collector failed to determine some material issue of law, or
- (c) that there was a substantial defect in following the procedure provided by this Act or that there has been failure to take evidence or error in appreciating important evidence which has resulted in the miscarriage of justice."

#. Without, therefore, going into the merits of the claim of respondent No.1 as erstwhile tenant, of purchase of the land in priority from the erstwhile landlord, the impugned order of Revenue Tribunal interfering with the order of the Collector in exercise of revisional powers under Section 76 r.w. Section 32P(9) of the Act (quoted above), deserves to be set aside. The Revenue Tribunal clearly exercised jurisdiction not vested in it when in fact it was expressly barred.

#. Consequently, this application succeeds and is allowed. The impugned order Annexure C dated 18-10-1998 passed by the Gujarat Revenue Tribunal is hereby quashed. Rule is made absolute. In the circumstances, however, the parties shall bear their own costs.

(D.M. DHARMADHIKARI, C.J.)

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